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Summary record of the 180th meeting*
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Chair: Mr. Huhle (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention

Initial report of Bosnia and Herzegovina

* No summary records were issued for the 178th and 179th meetings.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Bosnia and Herzegovina (CED/C/BIH/1; CED/C/BIH/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Bosnia and Herzegovina took places at the Committee table.*

2. **Mr. Sarač** (Bosnia and Herzegovina), introducing the initial report of Bosnia and Herzegovina (CED/C/BIH/1), said that the report had been drafted by an interdepartmental working group, comprising representatives of relevant institutions of Bosnia and Herzegovina, as well as of both Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. Even prior to its ratification of the Convention in 2012, Bosnia and Herzegovina had made significant efforts to address issues related to enforced disappearance, including by co-founding the Missing Persons Institute and by passing the Law on Missing Persons and other legislation that provided a legal basis for handling cases of missing persons. Despite the complex constitutional arrangement in Bosnia and Herzegovina, the legal and institutional framework was sufficiently sound to address the issue of missing persons. Under the legal system, international instruments, including the Convention, took priority over all other laws.

3. The Criminal Code transposed the essence of the provisions of the Convention, specifically article 2, by treating enforced disappearance as a separate offence and further defining it as a crime against humanity when committed as part of a widespread or systematic attack directed against a civilian population. The Criminal Code was applied at the national level, specifically to the offences under the jurisdiction of the Court of Bosnia and Herzegovina. However, the Convention was applicable to all institutions and all levels of government in the country. The Criminal Code, in addition to defining enforced disappearance, provided for the punishment of complicity as an act of aiding and abetting in the commission of a crime, and it enforced the statute of limitations regarding criminal offences, including acts of enforced disappearance. A large number of citizens continued to be listed as missing and unaccounted for as a result of the armed conflict that had taken place in Bosnia and Herzegovina in the 1990s. The Law on Missing Persons provided a definition of persons considered to be missing as a result of the armed conflict during the period from 30 April 1991 to 14 February 1996, and it thus constituted an important milestone for the families of victims of enforced disappearance.

4. The Code of Criminal Procedure of Bosnia and Herzegovina prescribed the procedure to be followed by the competent Prosecutor's Office in cases of enforced disappearance; it covered procedural guarantees and set out the rights and obligations of the authorities responsible for the conduct of criminal proceedings involving acts of enforced disappearance vis-à-vis the victims and their families, and the perpetrators of such acts. The Law on Legal Assistance in Criminal Matters laid down the substantive and procedural conditions for the prosecution of foreign nationals accused of committing acts of enforced disappearance. Other legislation that reflected the provisions of the Convention included the Law on Execution of Criminal Sanctions and the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. His Government had established institutions with exclusive jurisdiction over the entire territory of Bosnia and Herzegovina. The principle of non-refoulement was strictly observed by the State's institutions, thus ensuring that enforced disappearance did not occur either during foreigners' stay in Bosnia and Herzegovina or during their extradition to their country of origin.

5. While considerable progress had been achieved in ensuring the observance of the Convention, further action was needed to guarantee the exercise of victims' rights and to

improve the functioning of the Missing Persons Institute. At a meeting held in April 2016, the Council of Ministers had been informed about challenges facing the Institute and, with a view to enforcing the decisions of the Constitutional Court of Bosnia and Herzegovina, the competent institutions had been charged with bringing entity regulations governing the rights of civilian war victims — including the families of missing persons — in line with the Law on Missing Persons. The Institute had also been tasked with expediting the missing persons verification process and providing the Council of Ministers with regular updates on its progress. Furthermore, there were plans to draft a law on the rights of victims of torture in Bosnia and Herzegovina that would include victims of enforced disappearance. The Council of Ministers was committed to regional cooperation in locating and identifying missing persons; in that connection, it had recently signed an inter-State agreement with Serbia on the search for missing persons, and similar agreements were under way with Croatia and Montenegro.

6. **Mr. Corcuera Cabezut** (Country Rapporteur) said that the Committee would like to know what would happen if the provisions of the Convention were not in accordance with the legislation of Bosnia and Herzegovina, or with other legislation at the entity level. In that connection, the State party should provide clarification regarding paragraph 14 of its replies to the list of issues (CED/C/BIH/Q/1/Add.1), which implied that the incompatibility of a law with the Convention could be determined only by the Constitutional Court, and was thus in potential contradiction with the statement that the Convention was applicable to the entire territory and that it could be applied at any level, and by any court. Noting that each part of the country had its own criminal code, he said that it would be useful to learn whether the same was true of the Republika Srpska.

7. Since the criminal legislations of Bosnia and Herzegovina, the Entities and the Brčko District of Bosnia and Herzegovina had equal legal force, and given that their application was related to a specific area or for certain forms of offence, he asked whether, in the absence of provisions at the entity or district level that specifically defined enforced disappearance as a crime against humanity or as an isolated crime, the Criminal Code of Bosnia and Herzegovina would be applicable in cases of enforced disappearance. In addition, it would be interesting to learn of any differences in the potential jurisdiction of entity and district courts in cases of enforced disappearance as an isolated crime, as opposed to enforced disappearance as a crime against humanity. In that connection, clarification would be appreciated regarding the discrepancy described in paragraph 10 of the State party's replies to the list of issues, according to which article 190 (a) of the Criminal Code of Bosnia and Herzegovina was applicable only at the State level, and laws at the entity and district level should be amended accordingly.

8. Despite the adoption of provisions on the direct application of the European Convention on Human Rights, which included the principle of non-derogation of human rights, it seemed that domestic laws did not specifically provide for the non-derogability of the prohibition of enforced disappearance under exceptional circumstances. The Committee would appreciate information on whether the State party could envisage legislative measures to specifically incorporate an absolute prohibition of enforced disappearance, even under extraordinary circumstances.

9. He would also appreciate detailed information on the measures being taken to amend the entity criminal codes and the Criminal Code of Brčko District in order to recognize the responsibility of officials in respect of the offence of enforced disappearance, specifically with reference to article 6 of the Convention. Moreover, supposing that the codes of the Entities and Brčko District had already been amended, it would be useful to learn whether it was the person who had committed the crime or, rather, the place in which the crime had been committed, that determined the applicability of each code. As for the provision of the Criminal Code of the Republika Srpska that provided for a prison term of

not less than eight years in convictions for enforced disappearance, he said that the State party should elaborate on the statement in its replies to the list of issues that it was hoped that the Parliamentary Assembly of Bosnia and Herzegovina would provide the authentic interpretation of article 48 on general principles of meting out punishments. Lastly, an update on the number of missing persons verified would be appreciated, as would an explanation for the delay in the verification process, since the expected date of completion had been put back from 2009 to 2017.

10. **Ms. Galvis Patiño** (Country Rapporteur) said that she would welcome clarification of the time frame for amending article 118 (2) of the Criminal Code of Bosnia and Herzegovina, an update on the consideration by the Council of Ministers of the amendment of articles 1 and 3 of the Law of Bosnia and Herzegovina on Pardon, and detailed information on the cases in which full immunity from prosecution had been granted in the context of plea agreements, including the charges that had been brought against the perpetrators.

11. While noting that the concept of crimes of a permanent nature existed in criminal law theories, she said that it would be useful to learn whether the State party was taking steps to incorporate such a concept in criminal codes, including at the subnational level. The Committee would also welcome additional information on any cases in which article 190 (a) of the Criminal Code of Bosnia and Herzegovina had been applied to acts of enforced disappearance that had occurred earlier than the law's entry into force, if the fate or whereabouts of the victims were still unknown at that time. The Committee would appreciate information on the statute of limitations with regard to requests for compensation related to the crimes of enforced disappearance when the case in question was not deemed to be a crime against humanity, but simply an isolated crime. Referring to paragraph 11 of the State party's replies to the list of issues, she said that the Committee would also welcome information on any cases of extradition in which provisional custody had lasted the stated maximum of 18 days.

12. The State party should indicate which authorities were competent to investigate cases of enforced disappearance, particularly in Brčko District, as either a crime against humanity or an isolated crime, and provide information on the steps taken to expedite the investigation into unresolved cases of missing persons. In addition, it would be useful to learn which measures had been taken to address the scarcity of funding available to the Missing Persons Institute, and whether the board of directors had been appointed — a matter that had been pending since 2012. Given that no additional forensic pathologists had been appointed, the delegation should also indicate whether the Institute had sufficient human and financial resources to conduct all exhumations and identifications of remains falling under its jurisdiction.

13. In view of the State party's statement that certain decisions of the Constitutional Court had not been fully executed, clarification was needed regarding the content of those decisions and the steps taken and progress made towards their full execution.

14. The Committee would also appreciate information on the progress of the investigation into government officials suspected of the arrest and forced transfer of the "Algerian group".

15. The delegation should give an account of the measures taken or envisaged to address the backlog of war crimes cases, the number of such cases involving enforced disappearances, and whether those cases were tried by local and entity-level courts under the same laws as were applied by the Court of Bosnia and Herzegovina. Additional details should be provided on the penalties applied to the perpetrators of crimes involving enforced disappearance, in light of the judgment handed down by the European Court of Human Rights in the case of *Maktouf and Damjanović v. Bosnia and Herzegovina*.

16. The reply to paragraph 14 of the list of issues stated that the Law on Witness Protection Programme referred only to witnesses testifying before the Court of Bosnia and Herzegovina; however, it was unclear whether that Programme, as well as measures to protect the relatives of victims of forced disappearances from intimidation and threats, extended to the entity and district levels. Some indication should also be provided of efforts undertaken at the State, entity and district levels to provide psychological support for victims and witnesses fearing violence and revictimization.

17. Clarification was also needed regarding whether the State legislative provision for the suspension of individuals suspected of having participated in an enforced disappearance also existed at the entity and district levels. The Committee also wished to learn whether there was a mechanism to exclude the security force or institution that employed the suspected official from investigations into enforced disappearances.

18. Finally, the delegation should explain the circumstances in which a request for mutual legal assistance might be refused because its execution would prejudice the legal order of Bosnia and Herzegovina or its sovereignty or security.

19. **Mr. Hazan** requested further details on the content of the agreement with Serbia on the search for missing persons that had been mentioned in the opening statement. He would also be interested to learn what level of access the authorities investigating enforced disappearances had to the documentary information of the armed forces and the security and intelligence services. Moreover, given that 12 out of 15 persons tried in cases related to enforced disappearance had been acquitted, he would like to know whether there been appeals against those judgments and whether they were final. Lastly, he would be grateful for information regarding the offer of immunity to persons implicated in crimes in exchange for their willingness to testify. How effective had that approach been, in terms of implicating higher-level perpetrators and securing convictions?

20. **Mr. Figallo Rivadeneyra**, noting that the Court of Bosnia and Herzegovina was only authorized to directly apply international treaties in the absence of a domestic legal definition or provision, said that he wished to know whether that same process of direct application extended to the entities and to Brčko District. He would also welcome clarification of the statement that the Court of Bosnia and Herzegovina had not handed down final judgments pertaining to cases of enforced disappearance, and whether that meant that some judgments were not yet final. Lastly, he said that he too would like to know to what extent the Law on Witness Protection Programme was implemented at the entity and district levels.

21. **Mr. Yakushiji** said that he would welcome information on whether the principle of cooperation and consultation, mentioned in the reply to paragraph 2 of the list of issues, had any substantive or procedural content in the harmonization of the criminal legislation of Bosnia and Herzegovina with that of the Entities and of Brčko District. Recalling that enforced disappearance had been criminalized at the State level but not at the entity level or in Brčko District, he asked whether the Government had the means to fulfil its domestic obligations under the Convention. Considering that the Court of Bosnia and Herzegovina had "extended jurisdiction" over offences committed in the Entities, in addition to those offences provided for by the Criminal Code, he would appreciate further details on the initiatives that the Government might take when the Court of Bosnia and Herzegovina considered it necessary to exercise its extended jurisdiction.

22. **Mr. Decaux** said that the constitutional arrangements of Bosnia and Herzegovina presented a contradiction in that the State was responsible for signing treaties that had a bearing on criminal legislation but was faced with the impossibility of implementing them because jurisdiction was divided between the State and the Entities. It would be useful to know what solutions were envisaged as a result of the Structured Dialogue between the

European Union and Bosnia and Herzegovina. Noting the State party's introduction of the principle of derogation in time of emergency, established in the European Convention on Human Rights, he asked for clarification of whether that principle might be applied across all levels of government, or only in accordance with State legislation on crisis situations.

23. **Ms. Janina** expressed appreciation for the ratification of the Convention by Bosnia and Herzegovina and its recognition of the Committee's competence, which exemplified its determination to address the issue of enforced disappearances. She had been impressed to learn that a large majority of missing persons cases had been resolved. However, the Committee would be grateful for information on measures taken by the State party to take ownership of its international commitments, including under the regional declaration signed with Croatia, Montenegro and Serbia in August 2014. The delegation should also explain what steps had been taken to build the human and financial capacity of the Missing Persons Institute and provide it with a legal framework. Lastly, she would be interested to learn whether the Central Records of Missing Persons of Bosnia and Herzegovina contained disaggregated data on persons who had gone missing due to armed conflict and those that had been identified as the victims of enforced disappearance due to ethnic cleansing and other crimes against humanity.

24. **Mr. López Ortega**, recalling that proceedings had been reopened and more lenient sentences imposed following the ruling on *Maktouf and Damjanović v. Bosnia and Herzegovina*, said that he would welcome clarification of whether any other cases were currently open or likely to be reopened in future. The delegation should also clarify whether the figures provided on acquittals in cases before the Court of Bosnia and Herzegovina were correct, given that the appendix to the replies to the list of issues suggested that there had been 13 convictions.

The meeting was suspended at 4.05 p.m. and resumed at 4.30 p.m.

25. **Mr. Sarač** (Bosnia and Herzegovina) said that the Constitutional Court of Bosnia and Herzegovina was the country's only court with the power to review and determine whether legislation was in line with the Constitution and the international treaties enumerated therein. The provisions of the Convention prevailed over domestic legislation and were directly applied by the courts, since the principles of international law were a component part of the legal order of Bosnia and Herzegovina, as well as of its social and political life.

26. **Ms. Đuderija** (Bosnia and Herzegovina) said that appeals against non-compliant legislation could be lodged with the Constitutional Court by the Ombudsman's Office, as part of a process that could improve the implementation of the Convention. Responding to the questions on acquittals and impunity, she said that criminal legislation provided for sanctions in cases of enforced disappearance that constituted war crimes. As regards compensation, the statute of limitations did not apply in cases of war crimes, but did otherwise apply. Legislation in that regard was implemented equally at the State, entity and district levels.

27. The Missing Persons Institute was an independent body whose functions included gathering information and maintaining a database. An adequate budget was allocated to the Institute by the Council of Ministers; however, additional funds were sometimes provided by the Prosecutor's Office of Bosnia and Herzegovina in order to carry out exhumations. The search for missing persons relied heavily on international donations and funding from organizations such as the International Commission on Missing Persons, since the Institute did not have sufficient own resources to perform laboratory and DNA analysis. The remains of a number of victims had been identified thanks to different methods, including the introduction of DNA testing, which had reduced the number of unidentified persons to 8,300. It was hoped that final data on the verification of missing persons would be available

by the end of 2016 or early 2017. While Bosnia and Herzegovina did have forensic pathologists, their work was often funded from international grants and their capacities were not yet at the Government's disposal. Efforts were under way to establish forensic institutes in both Entities.

28. Responding to the question on the execution of the decisions of the Constitutional Court, she said that the measures taken had mainly related to the verification of missing persons data and the fulfilment of obligations deriving from the Law on Missing Persons. The decision on the Fund for Support for the Families of Missing Persons had been partly implemented, and funds had been allocated from entity and district budgets. Bosnia and Herzegovina followed best practice by applying a legal mechanism to support and protect witnesses and family members in cases of intimidation.

29. **Mr. Sarač** (Bosnia and Herzegovina) said that a new board of directors of the Missing Persons Institute of Bosnia and Herzegovina would be appointed in the coming few weeks. Funds belonging to the Institute that had been transferred to prosecution services for the purposes of exhumations would be applied to efforts to locate and identify missing persons.

30. **Mr. Bulić** (Bosnia and Herzegovina) said that crimes against humanity, which included enforced disappearance, did not fall exclusively under the jurisdiction of the Court of Bosnia and Herzegovina but could also be prosecuted before the courts of the two Entities. In its reply to the questions raised in paragraph 8 of the list of issues, the State party had indicated that, of the 13 cases brought against 15 persons who had been indicted on charges of enforced disappearance as a crime against humanity, the Court of Bosnia and Herzegovina had returned 12 acquittals. That information was erroneous; in fact, out of the 13 cases, 11 perpetrators had been convicted, not acquitted. One of the reasons for the high percentage of convictions was that the Court often granted full or limited immunity from prosecution to witnesses in exchange for their testimony against particular defendants.

31. The investigation into the case concerning the "Algerian group" was still pending in the cantonal prosecutor's office of Sarajevo Canton, and he could not supply any information as to why it had not been concluded, other than that there had been a two-year delay in the investigation and that the latter had recently been resumed. As to the decisions taken following the judgment handed down by the European Court of Human Rights in the case of *Maktouf and Damjanović v. Bosnia and Herzegovina*, the Constitutional Court had taken the view that all sentences that had been imposed on the basis of the Criminal Code of Bosnia and Herzegovina should be declared null and void and that new proceedings should be initiated under the Criminal Code of the Socialist Federal Republic of Yugoslavia. The one exception was the offence of crimes against humanity, including the crime of enforced disappearance, which could be prosecuted under the Criminal Code of Bosnia and Herzegovina and which carried a penalty of a term of imprisonment of 40 years. He was of the school of legal practitioners who supported a different interpretation of the judgment of the European Court of Human Rights in the aforementioned case and believed that the Constitutional Court's decision was not in keeping with the spirit of the European Court's judgment.

32. Although article 7 of the Law on the Court of Bosnia and Herzegovina provided for the so-called "extended jurisdiction" of the Court to include criminal offences defined not only under the Criminal Code of Bosnia and Herzegovina but also under that of the two Entities and Brčko District, in practice the Court did not exercise such jurisdiction. That was because doing so risked undermining the constitutional organization of the nation. Moreover, Bosnia and Herzegovina was a participant in the Structured Dialogue with the European Commission, the outcome of which might well result in reducing, rather than extending, the Court's jurisdiction.

33. Bosnia and Herzegovina applied international standards when granting immunity from prosecution and when engaging in plea bargaining, especially in the context of war crimes cases. Although exact figures were not available, he knew of at least 20 cases that had been concluded by means of plea agreements, under the terms of which defendants were required to testify as witnesses in order to assist the investigation by identifying other perpetrators or clarifying facts in the case.

34. Investigations in war crimes cases were complicated in Bosnia and Herzegovina by the scarcity of physical evidence. Such investigations therefore had to rely on the least desirable form of evidence, which was the testimony of witnesses. However, thanks to "insider" testimony and the practice of granting witnesses immunity from prosecution, evidence was eventually produced. That method was especially important in the case of massacres, such as the Srebrenica genocide, in which there had been very few survivors and in which those testifying had actually been parties to the crime.

35. **Ms. Kapetanović** (Bosnia and Herzegovina) said that the State had contacted the ministers of justice of the two Entities and the Judicial Commission of Brčko District, in order to recommend that they should begin efforts to codify enforced disappearance as an offence under their criminal codes and ensure that new provisions to that effect were in line with the relevant provisions of the Criminal Code of Bosnia and Herzegovina. The latter provided for the individual criminal responsibility of State officials who committed enforced disappearance at the State level, but not for those who did so at the entity or cantonal levels — hence the need for codification. The codification effort had already begun in the Republika Srpska, and similar procedures were under way in the Federation of Bosnia and Herzegovina and Brčko District. Because of their simpler administrative structure, the Republika Srpska and Brčko District were expected to adopt such legislation much sooner than the Federation of Bosnia and Herzegovina.

36. Amnesty was not granted for serious crimes under international law, such as enforced disappearance, and the Parliamentary Assembly was preparing a law that would enumerate the offences for which amnesty could be granted. Several amendments to the Law on Pardon had been proposed; they would limit the grant of a pardon for war crimes, genocide and crimes against humanity to persons convicted of those crimes who had served at least three fifths of their sentence. The amendments were awaiting approval by the Council of Ministers, and, if approved they would be submitted to the Parliamentary Assembly for adoption.

37. In keeping with the National Strategy for the Prosecution of War Crimes, efforts were under way to establish witness protection departments in cantonal courts so that persons implicated in cases transferred to them from the Court of Bosnia and Herzegovina could benefit from witness protection programmes and support to the same extent as witnesses who appeared before the Court, which had a special department providing witnesses with psychological support. Such a department had been set up in the Sarajevo cantonal court and in other cantonal courts, although the names of those courts were currently unavailable.

38. **Ms. Mešić** (Bosnia and Herzegovina) said that the Criminal Code of Bosnia and Herzegovina stipulated that enforced disappearance was a continuous offence and that the statute of limitations began once the unlawful situation that constituted it had ceased. When the Entities amended their criminal codes to include enforced disappearance as an offence, they would, at the same time, bring their provisions on the statute of limitations into line with those of the Criminal Code of Bosnia and Herzegovina.

39. The extradition of individuals who were suspected of involvement in acts of enforced disappearance was regulated by the Law on Mutual Legal Assistance in Criminal Matters. The Law governed the deprivation of liberty of such persons, which could last up

to 18 days and be extended up to 40 days, while the entire extradition procedure could last up to six months. Under the legislation of the State, proceedings initiated against public officials for offences carrying a sentence of imprisonment of at least five years automatically triggered the suspension of such officials from their duties. The same provisions were contained in the legislation of the two Entities and Brčko District.

40. **Ms. Bašić** (Bosnia and Herzegovina) said that measures to expedite the process of investigation in war crimes cases included increasing the material and technical resources of the Intelligence and Security Agency, increasing the number of police officers in the investigation department and intelligence units, and maintaining the databases that supported such investigations. The witness protection department of the State Investigation and Protection Agency did not have a staff psychologist, but a proposal had been made for the creation of such a post within the Agency.

41. **Ms. Đuderija** (Bosnia and Herzegovina) said that the main objective of the bilateral agreements that Bosnia and Herzegovina had concluded with neighbouring countries, in particular Serbia, Croatia and Montenegro, was to work jointly on locating the mortal remains of missing persons. The agreements ensured the parties access to the location of the remains, entitled them to participate in judicial proceedings as observers, and granted them access to all relevant information concerning the exhumation of the bodies of missing persons. Such agreements also regulated exchanges of information concerning the number of persons who were being sought in the territory of the other party to the agreement.

42. Any derogation from the enjoyment of human rights or any imposition of measures that were not in conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms had to be by means of lawful decisions taken by the competent authorities. Deprivation of liberty was strictly regulated by law, and no derogation from the rules governing it was allowed in Bosnia and Herzegovina.

43. **Mr. Corcuera Cabezut** said that the delegation should clarify whether the Ombudsman's Office could file a petition to challenge the constitutionality of a law with the Constitutional Court and whether it could submit a request for its amendment. He asked whether district or entity courts could declare null and void a law that they found to run counter to the Convention, or whether only the Constitutional Court was competent to do so.

44. Noting that the provisions of the Criminal Code of Bosnia and Herzegovina related to the crime of enforced disappearance could be applied retroactively to persons who had begun committing the crime prior to their entry into force, he asked how many perpetrators had been brought to justice through the retroactive application of those provisions. It would also be useful to hear more about the specific factors governing the applicability of those provisions at the district and entity levels.

45. He also wished to know whether any legislative measures had been adopted to enact the provisions of the Criminal Code of Bosnia and Herzegovina related to enforced disappearance in the Republika Srpska, and whether any legislative measures had been taken to amend existing district and entity laws to incorporate the crime of enforced disappearance.

46. Noting that the State party automatically suspended any public official suspected of involvement in a case of enforced disappearance to preclude their participation in the ensuing investigation, he asked whether the institution employing the public official in question was also excluded from participating in the investigation.

47. **Ms. Galvis Patiño** asked whether the Ombudsman's Office could file an appeal on its own initiative or whether it could do so only at the request of a person whose rights had been violated. It would be helpful to learn about the statute of limitation applicable to isolated cases of enforced disappearance, which did not constitute a crime against humanity,

and the compensation available to victims in such cases. The delegation should also indicate to what extent the Missing Persons Institute was dependent on international donations to operate, and whether the State party planned to increase the budgetary resources allocated to the Institute so as to make it self-sufficient. Lastly, she asked whether the total number of pending cases of enforced disappearance recorded by the State party had been contested by non-governmental actors.

48. **Mr. Yakushiji** said that it was his understanding that special arrangements needed to be put in place to allow the Court of Bosnia and Herzegovina to exercise extended jurisdiction, and that the arrangements in question were to be defined through a structured dialogue with the European Union. He would appreciate an update on the progress made in defining those arrangements.

49. **Mr. López Ortega** said that the delegation should provide the Committee, within 48 hours, with statistical data on the number of cases of enforced disappearance brought before the courts, the number of cases still pending and the number of sentences and acquittals handed down to date. He would also appreciate additional information on the reasons for establishing the mitigating and aggravating circumstances applicable to that offence listed in paragraphs 20 and 21 of the State party's replies to the list of issues, some of which were at variance with those set out in article 7 (2) of the Convention. The failure to include the death of disappeared persons, including children, as an aggravating circumstance was a serious oversight, as entire families had likely been disappeared and killed during the armed conflict in the country. The range of mitigating circumstances applicable to the offence of enforced disappearance, which included the age, marital status and state of health of the accused at the time of committing the offence, was so wide that they could severely restrict the application of the penalties prescribed in the Criminal Code of Bosnia and Herzegovina. He was particularly alarmed by the decision to include the reduced ability of the accused to understand the significance and consequences of his or her actions at the time of committing the offence as a mitigating circumstance. The State party should bear article 7 (2) of the Convention in mind as it pursued its programme of legislative reform and consider introducing it as a criterion for the application of the Convention by the courts.

50. **Mr. Hazan** asked whether the conclusion of plea agreements, whereby the accused showed remorse and willingness to accept responsibility for their actions, led to a reduction in the sentence imposed upon them. It would also be useful to receive a copy of the agreement on cooperation in the search for missing persons concluded with Serbia.

51. **Mr. Saračˇ** (Bosnia and Herzegovina) said that, while the Ombudsman's Office was not empowered to file a petition to challenge the constitutionality of a law with the Constitutional Court, it could request an authorized individual, such as a high-ranking minister or a member of Parliament, to do so on its behalf.

52. It was highly unlikely that district or entity courts would ever have to declare null and void a law that ran counter to the Convention, as all lawmakers were required to abide by international human rights standards and so would not ordinarily draft or enact a law that was inconsistent with the Convention.

53. Bosnia and Herzegovina had signed an agreement on cooperation in the search for missing persons with Serbia and intended to sign similar agreements with Croatia and Montenegro in the near future.

54. **Mr. Bulić** (Bosnia and Herzegovina) said that, if a district or entity court found a law to run counter to the Convention, which made it unconstitutional, it could make a request for a petition to be filed with the Constitutional Court with a view to its amendment.

55. The provisions of the Criminal Code of Bosnia and Herzegovina defining the crime of enforced disappearance could be applied retroactively, as it was considered to be a continuous crime.

56. Jurisdiction over offences of enforced disappearance was determined by whether the perpetrator was a public official working for the central, entity or district authorities and not by the place of commission of the offence.

57. If there was a conflict of interest, the institution employing a public official suspected of having committed the offence of enforced disappearance could also be excluded from participating in the ensuing investigation. Similarly, courts could be prevented from trying certain cases if a conflict of interest was identified.

58. The Prosecutor's Office of Bosnia and Herzegovina recommended handing down sentences that were commensurate with the gravity of the crime of enforced disappearance, regardless of the mitigating circumstances applicable, some of which it found to be unacceptable. However, the courts reserved the right to take account of any aggravating or mitigating circumstances that they deemed applicable to the case and could proceed to acquit the accused on the basis of mitigating circumstances without the Prosecutor's Office being able to appeal the decision.

59. Persons accused of having committed the offence of enforced disappearance who concluded a plea agreement with the Prosecutor's Office of Bosnia and Herzegovina often received a more lenient sentence as a reward for having admitted their guilt, testified and saved human and financial resources.

60. **Ms. Đuderija** (Bosnia and Herzegovina) said that the right of victims of enforced disappearance to non-material damages was guaranteed by the Law on Obligations. Such damages could be awarded during criminal proceedings, provided that doing so did not impede their progress, or, alternatively, during separate civil proceedings.

61. The Missing Persons Institute was funded primarily from the State budget but did rely on international donations to cover the cost of DNA testing, which was both essential and extremely expensive. It was hoped that after the reform of the Institute was complete, it would be able to secure additional national resources and become self-sufficient. The cost of exhuming the remains of victims of war crimes was absorbed by the budget allocated to the competent courts. The discrepancy in the number of missing persons was chiefly attributable to misapplication of the definition of enforced disappearance and the difficulty of determining whether those persons had gone missing as a result of enforced disappearance, since essential information was often slow to come to light. The process of verifying the status of persons reported missing was ongoing and more precise figures could be provided once it was completed. Although most of the persons in question had gone missing during the armed conflict in the country, many sets of remains had been buried in one location before being moved to another, which constituted a major obstacle to the aforementioned verification process. The Government remained committed to locating and identifying the remains of every person who had gone missing during the armed conflict.

62. **Ms. Bašić** (Bosnia and Herzegovina) said that the structured dialogue with the European Union on the special arrangements to be put in place to allow the Court of Bosnia and Herzegovina to exercise extended jurisdiction was still ongoing. Crimes against humanity, including the crime of enforced disappearance, were not covered by article 7 of the Law on the Court of Bosnia and Herzegovina and were therefore not covered by the Court's extended jurisdiction.

63. In the Republika Srpska, a working group had been set up to draft a new criminal code, and similar legislative initiatives were being undertaken in the Federation of Bosnia

and Herzegovina and in Brčko District. However, none of those legislative initiatives had been submitted to Parliament, and no other legislative measures had been taken to amend existing district and entity laws to incorporate the crime of enforced disappearance.

64. **Mr. Bulić** (Bosnia and Herzegovina) said that law enforcement agencies, prosecutors and preliminary proceedings judges could all hold a person suspected of involvement in a case of enforced disappearance in pretrial detention for up to 24 hours. If a continuing detention order was not issued once that period of time had elapsed, the suspect had to be released.

The meeting rose at 5.55 p.m.